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HOUSE BILL 172

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE STUDENT LOAN  
BILL OF RIGHTS ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 61 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the  
"Student Loan Bill of Rights Act"."

SECTION 2. A new section of Chapter 61 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Student Loan  
Bill of Rights Act:

A. "director" means the director of the division;

B. "division" means the financial institutions  
division of the regulation and licensing department;

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1 C. "servicing" means:

2 (1) receiving scheduled periodic payments from  
3 a student loan borrower pursuant to the terms of a student  
4 education loan;

5 (2) applying payments of principal and  
6 interest, and such other payments with respect to the amounts  
7 received from a student loan borrower, as may be required  
8 pursuant to the terms of a student education loan; and

9 (3) performing other administrative services  
10 with respect to student education loans;

11 D. "student education loan" means a loan primarily  
12 for personal use to finance higher-education-related expenses,  
13 but does not include an isolated personal loan made by an  
14 individual to another for higher-education-related expenses;

15 E. "student loan borrower" means:

16 (1) a resident of New Mexico who has received  
17 or agreed to pay a student education loan; or

18 (2) a person who shares responsibility with a  
19 resident of New Mexico for repaying a student education loan;  
20 and

21 F. "student loan servicer" means a person engaged  
22 in the business of servicing of student education loans to a  
23 student loan borrower."

24 SECTION 3. A new section of Chapter 61 NMSA 1978 is  
25 enacted to read:

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1           "[NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

2           A. A person shall not act directly or indirectly as  
3 a student loan servicer without first obtaining a license from  
4 the division pursuant to the Student Loan Bill of Rights Act,  
5 unless that person is exempt from licensure pursuant to  
6 Subsection B of this section.

7           B. The following persons are exempt from licensing  
8 requirements pursuant to the Student Loan Bill of Rights Act:

9                   (1) a bank or credit union;

10                   (2) a wholly owned subsidiary of a bank or  
11 credit union; and

12                   (3) an operating subsidiary of a bank or  
13 credit union where each owner of the operating subsidiary is  
14 wholly owned by the same bank or credit union."

15           SECTION 4. A new section of Chapter 61 NMSA 1978 is  
16 enacted to read:

17           "[NEW MATERIAL] LICENSE APPLICATION--INVESTIGATION--  
18 LICENSE ISSUANCE.--

19           A. A person seeking to act as a student loan  
20 servicer shall make a written application to the director for  
21 an initial license in a form prescribed by the director. The  
22 application shall include:

23                   (1) a financial statement prepared by a  
24 certified or registered public accountant, the accuracy of  
25 which is sworn to under oath before a notary public by the

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1 proprietor, a general partner or a corporate officer or a  
2 member duly authorized to execute such documents;

3 (2) the history of criminal convictions of  
4 the:

5 (a) applicant;

6 (b) partners, if the applicant is a  
7 partnership;

8 (c) members, if the applicant is a  
9 limited liability company or association; or

10 (d) officers, directors and principal  
11 employees, if the applicant is a corporation;

12 (3) sufficient information pertaining to the  
13 history of criminal convictions of the applicant, partners,  
14 members, officers, directors or principal employees as the  
15 director deems necessary to make the findings required pursuant  
16 to Subsection D of this section;

17 (4) a nonrefundable license fee of one  
18 thousand dollars (\$1,000); and

19 (5) a nonrefundable investigation fee of eight  
20 hundred dollars (\$800).

21 B. Upon the filing of an application for an initial  
22 license and the payment of required fees, the director shall  
23 investigate the financial condition and responsibility, the  
24 financial and business experience and the character and general  
25 fitness of the applicant.

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1           C. The director may conduct a state and national  
2 criminal history records check of the applicant and of each  
3 partner, member, officer, director and principal employee of  
4 the applicant.

5           D. The director shall issue a license for a student  
6 loan servicer pursuant to the Student Loan Bill of Rights Act  
7 if the director finds that:

8                   (1) the applicant has submitted a completed  
9 application;

10                   (2) the applicant's financial condition is  
11 sound;

12                   (3) the applicant's business will be conducted  
13 honestly, fairly, equitably, carefully and efficiently within  
14 the purposes and intent of the Student Loan Bill of Rights Act  
15 and in a manner commanding the confidence and trust of the  
16 community;

17                   (4) a person has not made an incorrect  
18 statement of a material fact on behalf of the applicant either  
19 in the application or in a report or statement made pursuant to  
20 the Student Loan Bill of Rights Act;

21                   (5) a person on behalf of the applicant has  
22 not knowingly omitted to state a material fact on behalf of the  
23 applicant necessary to give the director information lawfully  
24 required by the director pursuant to the Student Loan Bill of  
25 Rights Act;

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1 (6) the applicant has paid the license fee and  
2 investigation fee required pursuant to this section;

3 (7) the applicant has met all other  
4 requirements pursuant to the Student Loan Bill of Rights Act as  
5 determined by the director; and

6 (8) if the applicant is:

7 (a) an individual, that the individual  
8 is in all respects properly qualified and of good character;

9 (b) a partnership, that each partner is  
10 in all respects properly qualified and of good character;

11 (c) a corporation or association, that  
12 the following are in all respects properly qualified and of  
13 good character, including the corporation's or association's:  
14 1) president; 2) executive committee chair; 3) senior officer  
15 responsible for the corporation's business; 4) chief financial  
16 officer; or 5) or any other person who performs functions  
17 similar to those described in Items 1) through 4) of this  
18 subparagraph and as determined by the director; and 6) each  
19 director, each trustee and each shareholder owning ten percent  
20 or more of each class of the securities of the corporation or  
21 association; or

22 (d) a limited liability company, that  
23 each member is in all respects properly qualified and of good  
24 character."

25 SECTION 5. A new section of Chapter 61 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] LICENSE EXPIRATION--LICENSE SURRENDER--  
3 LICENSE RENEWAL--LICENSE SUSPENSION--INFORMATION UPDATE--  
4 LICENSE ABANDONMENT--NO ABATEMENT OF FEES.--

5 A. A license issued pursuant to the Student Loan  
6 Bill of Rights Act shall expire at the close of business on  
7 September 30 of the year following its issuance, unless renewed  
8 or earlier surrendered, suspended or revoked pursuant to the  
9 Student Loan Bill of Rights Act.

10 B. Not later than fifteen days after a licensee  
11 ceases to engage in the business of student loan servicing in  
12 New Mexico for any reason, the licensee shall provide written  
13 notice of surrender to the director and shall surrender to the  
14 director its license for each location in which the licensee  
15 has ceased to engage in the business of student loan servicing.  
16 The written notice of surrender shall identify the location  
17 where the records of the licensee will be stored and the name,  
18 address and telephone number of an individual authorized to  
19 provide access to the records. The surrender of a license does  
20 not reduce or eliminate the licensee's civil or criminal  
21 liability arising from acts or omissions occurring prior to the  
22 surrender of the license, including administrative actions by  
23 the director to revoke or suspend a license, assess a civil  
24 penalty, order restitution or exercise any other authority  
25 provided to the director pursuant to the Student Loan Bill of

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1 Rights Act.

2 C. After notice of surrender of a license is  
3 provided to the director in accordance with this section, the  
4 license may be renewed for the next twenty-four-month period  
5 upon the filing of an application containing all required  
6 documents and fees required by the Student Loan Bill of Rights  
7 Act. The renewal application shall be filed on or before  
8 September 1 of the year in which the license expires. A  
9 renewal application filed with the director after September 1  
10 of the year in which the license expires, but that is  
11 accompanied by a one-hundred-dollar (\$100) late fee, shall be  
12 deemed to be timely. If an application for a renewal license  
13 has been filed with the director on or before the date the  
14 license expires, the license sought to be renewed shall  
15 continue in full force and effect until the director issues the  
16 renewed license or the director has notified the licensee in  
17 writing of the director's refusal to renew the license,  
18 including the grounds for the refusal. The director may refuse  
19 to renew a license on any ground upon which the director may  
20 refuse to issue an initial license.

21 D. If the director determines that a check filed  
22 with the director to pay a renewal fee has been dishonored, the  
23 director shall automatically suspend the license. The director  
24 shall give the licensee notice of the automatic suspension  
25 pending proceedings for revocation or refusal to renew and an

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1 opportunity for a hearing on such actions pursuant to the  
2 Uniform Licensing Act.

3 E. The applicant or licensee shall notify the  
4 director, in writing, of any change in the information provided  
5 in its initial application for a license or its most recent  
6 renewal application for such license, as applicable, not later  
7 than ten business days after the occurrence of the event that  
8 results in that information becoming inaccurate.

9 F. The director shall deem an application for a  
10 license abandoned if the applicant fails to respond to a  
11 request for information required pursuant to the Student Loan  
12 Bill of Rights Act or any rules adopted pursuant to that act.  
13 The director shall notify the applicant, in writing, that if  
14 the applicant fails to submit that information not later than  
15 sixty days after the date on which such request for information  
16 was made, the application shall be deemed abandoned. An  
17 application filing fee paid before the date an application is  
18 deemed abandoned pursuant to this subsection shall not be  
19 refunded. Abandonment of an application does not preclude the  
20 applicant from submitting a new application for a license  
21 pursuant to the Student Loan Bill of Rights Act.

22 G. A license fee paid pursuant to the Student Loan  
23 Bill of Rights Act shall not be abated."

24 SECTION 6. A new section of Chapter 61 NMSA 1978 is  
25 enacted to read:

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1           "[NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--  
2 TRANSFERABILITY--ASSIGNABILITY.--

3           A. A licensed student loan servicer shall not  
4 service student education loans under a name or at a place of  
5 business other than as listed in the license. A change of a  
6 place of business shall require prior written notice to the  
7 director. Not more than one place of business shall be  
8 maintained under the same license, but the director may issue  
9 more than one license to the same licensee that is in  
10 compliance with the provisions of the Student Loan Bill of  
11 Rights Act.

12           B. A license for a student loan servicer is not  
13 transferable or assignable."

14           SECTION 7. A new section of Chapter 61 NMSA 1978 is  
15 enacted to read:

16           "[NEW MATERIAL] RECORD RETENTION.--

17           A. A student loan servicer shall maintain adequate  
18 records of each student education loan transaction for at least  
19 two years following the final payment on a student education  
20 loan or the assignment of a student education loan, whichever  
21 occurs first, or a longer period the director may require.

22           B. Within five business days of receipt of a  
23 request for student loan education records from the director, a  
24 student loan servicer shall make the records available to the  
25 director, or shall send the records to the director by

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1 registered or certified mail, return receipt requested, or by  
2 any express delivery carrier that provides a dated delivery  
3 receipt. Upon request, the director may grant a licensee  
4 additional time to make the records available or send the  
5 records to the director."

6 SECTION 8. A new section of Chapter 61 NMSA 1978 is  
7 enacted to read:

8 "[NEW MATERIAL] STUDENT LOAN SERVICERS--PROHIBITED ACTS.--

9 A student loan servicer shall not:

10 A. directly or indirectly employ a scheme, device  
11 or artifice intended to defraud or mislead a student loan  
12 borrower;

13 B. engage in an unfair or deceptive practice toward  
14 a person or misrepresent or omit material information in  
15 connection with the servicing of a student education loan,  
16 including misrepresenting the amount, nature or terms of a fee  
17 or payment due or claimed to be due on a student education  
18 loan, the terms and conditions of the loan agreement or the  
19 student loan borrower's obligations under the loan;

20 C. obtain property by fraud or misrepresentation;

21 D. knowingly misapply or recklessly apply student  
22 education loan payments to the outstanding balance of a student  
23 education loan;

24 E. knowingly or recklessly provide inaccurate  
25 information to a credit bureau;

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1 F. fail to report a favorable or unfavorable  
2 payment history of a student loan borrower to a nationally  
3 recognized consumer credit bureau at least annually if the  
4 student loan servicer regularly reports information to a credit  
5 bureau;

6 G. refuse to communicate with an authorized  
7 representative of a student loan borrower who provides a  
8 written authorization signed by the student loan borrower;  
9 provided that the student loan servicer may adopt procedures  
10 reasonably related to verifying that the representative is  
11 authorized to act on behalf of the student loan borrower; or

12 H. negligently make a false statement or knowingly  
13 and wilfully make an omission of a material fact in connection  
14 with any information or report filed with a governmental agency  
15 or in connection with an investigation conducted by the  
16 director or another governmental agency."

17 SECTION 9. A new section of Chapter 61 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] POWERS OF THE DIRECTOR.--

20 A. The director may conduct investigations and  
21 examinations for purposes of initial licensing, license  
22 renewal, license suspension, license revocation or termination,  
23 or for general or specific inquiry or investigation, to  
24 determine compliance with the Student Loan Bill of Rights Act.  
25 The director may access, receive and use any documents,

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1 information or evidence the director deems relevant to the  
2 inquiry or investigation regardless of the location,  
3 possession, control or custody of such documents, information  
4 or evidence.

5 B. For the purposes of investigating violations or  
6 complaints arising pursuant to the Student Loan Bill of Rights  
7 Act or for the purposes of examination, the director may  
8 review, investigate or examine the activities of any student  
9 loan servicer as often as necessary to carry out the purposes  
10 of that act. The director may direct, subpoena or order the  
11 attendance of and examine under oath a person whose testimony  
12 may be required about the student education loan or the  
13 business or subject matter of the examination or investigation  
14 and may direct, subpoena or order the person to produce books,  
15 accounts, records, files and any other documents the director  
16 deems relevant to the inquiry.

17 C. In making an examination or investigation  
18 authorized by the Student Loan Bill of Rights Act, the director  
19 may control access to any documents or records of the student  
20 loan servicer licensee or person under examination or  
21 investigation related to the student education loan. The  
22 director may take possession of the documents and records or  
23 place a person in exclusive charge of the documents and records  
24 in the place where they are usually kept. During the period of  
25 control, a person shall not remove or attempt to remove any of

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1 the documents and records except pursuant to a court order or  
2 with the consent of the director. Unless the director has  
3 reasonable grounds to believe the documents or records of the  
4 student loan servicer licensee or person have been, or are at  
5 risk of being, altered or destroyed for purposes of concealing  
6 a violation of the Student Loan Bill of Rights Act, the student  
7 loan servicer licensee or owner of the documents and records  
8 shall have access to the documents or records as necessary to  
9 conduct its ordinary business affairs.

10 D. To fulfill the duties imposed by this section  
11 and to carry out the purposes of this section, the director  
12 may:

13 (1) retain attorneys, accountants or other  
14 professionals and specialists as examiners, auditors or  
15 investigators to conduct or assist in the conduct of  
16 examinations or investigations;

17 (2) enter into agreements or relationships  
18 with other government officials or regulatory associations to  
19 improve efficiencies and reduce regulatory burden by sharing  
20 resources, standardized or uniform methods or procedures and  
21 documents, records, information or evidence obtained pursuant  
22 to this section;

23 (3) use, hire, contract or employ public or  
24 privately available analytical systems, methods or software to  
25 examine or investigate the student loan servicer licensee or

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1 person subject to the Student Loan Bill of Rights Act;

2 (4) accept and rely on examination or  
3 investigation reports made by other government officials,  
4 whether in or outside of New Mexico; and

5 (5) accept audit reports made by an  
6 independent certified public accountant for the student loan  
7 servicer licensee or person subject to the Student Loan Bill of  
8 Rights Act in the course of that part of the examination  
9 covering the same general subject matter as the audit and may  
10 incorporate the audit report in the report of examination,  
11 report of investigation or other writing of the director.

12 E. The authority of this section shall remain in  
13 effect, whether a student loan servicer licensee or person  
14 subject to the provisions of the Student Loan Bill of Rights  
15 Act acts or claims to act under any licensing or registration  
16 law of New Mexico or claims to act without such authority.

17 F. A student loan servicer licensee or person  
18 subject to investigation or examination under this section  
19 shall not knowingly withhold, abstract, remove, mutilate,  
20 destroy or secrete any books, records, computer records or  
21 other information."

22 SECTION 10. A new section of Chapter 61 NMSA 1978 is  
23 enacted to read:

24 "[NEW MATERIAL] ENFORCEMENT BY DIRECTOR.--

25 A. To ensure the effective supervision and

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1 enforcement of the Student Loan Bill of Rights Act and in  
2 accordance with the procedures provided in the Uniform  
3 Licensing Act, the director may:

4 (1) deny, suspend, revoke or decline to renew  
5 a license for a violation of the Student Loan Bill of Rights  
6 Act, rules issued pursuant to that act or an order or directive  
7 entered pursuant to that act;

8 (2) deny, suspend, revoke or decline to renew  
9 a license if an applicant or student loan servicer fails at any  
10 time to meet the requirements of Subsection D of Section 4 of  
11 the Student Loan Bill of Rights Act;

12 (3) impose fines on a student loan servicer  
13 pursuant to Subsection B of this section;

14 (4) bar or suspend a student loan servicer  
15 from licensure in New Mexico as a student loan servicer; and

16 (5) issue orders or directives as follows:

17 (a) order or direct student loan  
18 servicers to cease and desist from conducting business related  
19 to student loans, including issuing an immediate temporary  
20 order to cease and desist;

21 (b) order or direct student loan  
22 servicers to cease any violations of the Student Loan Bill of  
23 Rights Act; and

24 (c) enter immediate temporary orders to  
25 cease any business licensed pursuant to the Student Loan Bill

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1 of Rights Act if the director determines that the license was  
2 erroneously granted or the licensed student loan servicer is  
3 currently in violation of that act.

4 B. The director may impose an administrative  
5 penalty on a student loan servicer if the director finds, on  
6 the record after notice and opportunity for hearing, that the  
7 student loan servicer has violated or failed to comply with any  
8 requirement of the Student Loan Bill of Rights Act or any rule  
9 promulgated by the director pursuant to that act or any order  
10 issued pursuant to authority of that act. The maximum amount  
11 of penalty for each act or omission shall be five thousand  
12 dollars (\$5,000)."

13 SECTION 11. A new section of Chapter 61 NMSA 1978 is  
14 enacted to read:

15 "[NEW MATERIAL] JUDICIAL ENFORCEMENT.--

16 A. Upon a showing by the director that a person has  
17 violated, or is about to violate, the Student Loan Bill of  
18 Rights Act or any rule or order of the director pursuant to  
19 that act, the district court of the first judicial district or  
20 other appropriate district court in the state may grant or  
21 impose one or more of the following appropriate legal or  
22 equitable remedies:

- 23 (1) a temporary restraining order, permanent  
24 or temporary prohibitory or mandatory injunction or a writ of  
25 prohibition or mandamus;

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1 (2) a civil penalty up to a maximum of five  
2 thousand dollars (\$5,000) for each violation;

3 (3) declaratory judgment;

4 (4) restitution to student loan borrowers;

5 (5) recovery by the director of all costs and  
6 expenses for conducting an investigation or the bringing of any  
7 enforcement action under the Student Loan Bill of Rights Act;

8 or

9 (6) other relief as the court deems just.

10 B. In determining the appropriate relief, the court  
11 shall consider enforcement actions taken and imposed by the  
12 director pursuant to the Student Loan Bill of Rights Act in  
13 connection with the transactions constituting violations of  
14 that act.

15 C. The court shall not require the director to post  
16 bond in an action pursuant to this section."

17 SECTION 12. A new section of Chapter 61 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] CRIMINAL PENALTIES.--

20 A. An individual who acts as a student loan  
21 servicer without being properly licensed pursuant to the  
22 Student Loan Bill of Rights Act is, for a first offense, guilty  
23 of a misdemeanor and upon conviction shall be sentenced in  
24 accordance with the provisions of Subsection A of Section  
25 31-19-1 NMSA 1978.

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1           B. In the case of a conviction pursuant to  
2 Subsection A of this section, the court may impose a deferred  
3 sentence in accordance with Section 31-20-6 NMSA 1978.

4           C. An individual who violates Subsection A of this  
5 section is, for a second or subsequent offense, guilty of a  
6 fourth degree felony and upon conviction shall be sentenced in  
7 accordance with the provisions of Section 31-18-15 NMSA 1978."

8           **SECTION 13.** A new section of Chapter 61 NMSA 1978 is  
9 enacted to read:

10           "[NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW.--A student  
11 loan servicer shall comply with all applicable federal laws and  
12 regulations relating to student loan servicing, including the  
13 Truth in Lending Act, 15 U.S.C. Section 1601 et seq., as  
14 amended, and the regulations promulgated under that act. In  
15 addition to any other remedies provided by law, a violation of  
16 the federal law or regulation is a violation of the Student  
17 Loan Bill of Rights Act."

18           **SECTION 14.** A new section of Chapter 61 NMSA 1978 is  
19 enacted to read:

20           "[NEW MATERIAL] PROMULGATION OF RULES.--The director shall  
21 promulgate rules necessary to implement the Student Loan Bill  
22 of Rights Act. The rules shall be subject to judicial review  
23 in the manner set forth in Section 12-8-8 NMSA 1978."

24           **SECTION 15.** A new section of Chapter 61 NMSA 1978 is  
25 enacted to read:

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1           "[NEW MATERIAL] STUDENT LOAN OMBUDSMAN--DUTIES--ANNUAL  
2 REPORT.--

3           A. The director shall designate a student loan  
4 ombudsman within the division to provide timely assistance to  
5 student loan borrowers.

6           B. The student loan ombudsman shall:

7                   (1) receive, review and attempt to resolve  
8 complaints from student loan borrowers;

9                   (2) compile and analyze data regarding student  
10 loan borrower complaints as described in Paragraph (1) of this  
11 subsection;

12                   (3) assist student loan borrowers in  
13 understanding their rights and responsibilities under the terms  
14 of student education loans;

15                   (4) provide information to the public, state  
16 agencies, state legislators and others regarding the problems  
17 and concerns of student loan borrowers and make recommendations  
18 for resolving those problems and concerns;

19                   (5) analyze and monitor the development and  
20 implementation of federal, state and local laws, regulations  
21 and policies relating to student loan borrowers and make  
22 recommendations for any changes deemed necessary;

23                   (6) review the complete student education loan  
24 history for any student loan borrower who has provided written  
25 consent for such review;

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1                   (7) disseminate information concerning the  
2 availability of the student loan ombudsman to assist student  
3 loan borrowers and potential student loan borrowers, public  
4 institutions of higher education, student loan servicers and  
5 other participants in student education loan lending with  
6 student loan servicing concerns; and

7                   (8) take any other action deemed necessary to  
8 fulfill the duties of the student loan ombudsman.

9                   C. On or before July 1, 2020, the student loan  
10 ombudsman shall establish and maintain a student loan borrower  
11 education course that includes educational presentations and  
12 materials regarding student education loans. The student loan  
13 borrower education course shall review key loan terms,  
14 documentation requirements, monthly payment obligations,  
15 income-based repayment options, loan forgiveness and disclosure  
16 requirements. Any license, renewal, late filing or  
17 investigation fees imposed pursuant to the Student Loan Bill of  
18 Rights Act shall be distributed to the division for the  
19 administration and expenses incurred for offering the course.

20                   D. On or before December 1, 2021, and annually  
21 thereafter, the director shall submit a report to the  
22 appropriate legislative interim committee and address the  
23 following:

24                   (1) the implementation of the Student Loan  
25 Bill of Rights Act;

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1 (2) the overall effectiveness of the student  
2 loan ombudsman position; and

3 (3) any recommendations pertaining to the  
4 division's regulation of student loan servicers and the  
5 enforcement of the provisions of the Student Loan Bill of  
6 Rights Act."

7 SECTION 16. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is January 1, 2020.

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